

pass to surprise Exmark with substantive discovery right before trial. Frankly, Exmark is surprised Briggs would even make such an argument.

Additionally, Briggs tries to draw equivalency between its newly produced photographs (Exhibits 2322, 2323, and 2324), and two mowing videos Exmark added to its list. (*Id.* at 3-4.) But as explained in Exmark's opening brief, Exmark's videos are for demonstrative purposes. (Dkt. 865 at 2.) Exmark wanted to be able to show an Exmark mower mowing (just like Briggs demonstrated a Ferris mower to the jury in 2015), but Exmark suspects that such a demonstration cannot likely be made live during trial in the middle of December when snow is likely to be on the ground and there is no grass to mow. On the other hand, Briggs' supplemental exhibits 2322, 2323, and 2324 appear to be for the purpose of making some substantive point of comparison at trial. There is no justifiable reason to allow Briggs to introduce this newly produced evidence. Exmark would be significantly and unfairly prejudiced by such late produced evidence and argument at trial.

EXMARK MANUFACTURING CO., INC.

By its attorneys,

Dated: December 5, 2018

s/ Joseph W. Winkels

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CERTIFICATE OF SERVICE

I certify that on December 5, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record, including:

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